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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

THE AVIATION CLUB OF UTAH, a corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

MAY IT PLEASE THE COURT:

Your petitioner, The Aviation Club of Utah, a corporation, petitions this Honorable Court for a writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Tenth Circuit in the above entitled case. Petitioner respectfully represents to this court:

SUMMARY STATEMENT OF MATTER INVOLVED

From its operations as a private social club, The Aviation Club of Utah had revenues and net earnings in the years 1941, 1942 and 1943. It claims that all of those revenues were and are exempt from income, declared value excess profits, and excess profits taxes by Section 101 (9) of the Internal Revenue Code which reads:

> **"101. Exemptions from tax on corporations.**
> The following organizations shall be exempt from taxation under this chapter—
>
> (9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes,

no part of the net earnings of which inures to the benefit of any private shareholder.'"

Specifically, your petitioner contends that it is a private club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and that no part of its net earnings inured to the benefit of any private shareholder. Its contention in those particulars was rejected by the defendant Commissioner of Internal Revenue. The case was then submitted to the Tax Court of the United States.

The Tax Court ruled that the exemption claimed by your petitioner applied to earnings for 1941 but not to the earnings of 1942 and 1943, and, therefore, sustained the taxes levied for those two years. (R 27, 28) Upon review the Circuit Court of Appeals for the Tenth Circuit affirmed the decision of the Tax Court. (R 151)

Petitioner was organized in 1940 for social, recreational and other nonprofitable purposes in accordance with applicable provisions of the corporation code of Utah. It has never issued any capital stock and membership is not assignable, either by a member or by operation of law. (R 18) In 1941 the club, by contract of purchase, acquired possession of a clubhouse in the residential section of Salt

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[1]Helpful in connection with the sections of the revenue law involved is the first paragraph of the Tax Court's opinion. R. 24:

"The petitioner claims exemption from tax under section 101 (9), I. R. C. That section provides that 'Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder' shall be exempt from taxation under Chapter 1. The income tax is imposed by Chapter 1, but the declared value excess profits and the excess profits tax are imposed by Chapter 2. Section 727 (a) provides that corporations exempt under section 101 from the tax imposed by Chapter 1 shall be exempt from tax imposed by Subchapter E-Excess Profits Tax. The declared value excess profits tax is imposed under Subchapter B of Chapter 2. Section 600 provides that if any corporation is taxable under section 1200, a declared value excess profits tax shall be imposed. Section 603 provides that all provisions of law applicable in respect of taxes imposed by Chapter 1 shall, in so far as not inconsistent with Subchapter B, be applicable in respect of the declared value excess profits tax. The petitioner does not contest the additions to the tax for delinquency in filing returns except by its single contention that it was wholly exempt from tax for all three years."

Lake City. Its clubhouse has none of the appearances of a commercial or public institution and no advertising of any kind whatsoever has been resorted to to indicate to the passerby the existence of the club as such. (R 18)

The only testimony upon the subject indicates that the purpose of the club was entirely nonprofit. (R 18) Its organization resulted from a desire on the part of the organizers (thirty individuals who had a common interest in aviation) to provide a place of relaxation and association for those interested in aviation. Impetus was given to the organization and development of the club by General Ralph Royce, who commanded a small contingent of Air Corps officers in or near Salt Lake City prior to Pearl Harbor, and who hoped for the creation of a place where his flyers might find social relaxation and companionship. (R 41)

It was the design of the organizers that nonresident friends might become guest or associate members temporarily and thereby find pleasure and recreation in the club rooms. (R 45) As early as 1941, military installations in and near Salt Lake City began to multiply and the number of military officers in Salt Lake City who were seeking recreation such as the club furnished greatly increased. (R 80, 94) The U. S. O. was set up to care for the needs of enlisted men, but there was no equivalent for officer personnel stationed temporarily in or near Salt Lake City. (R 90, 91) Commanding officers of military installations and executives of the civilian defense urged upon all private clubs the necessity of making available their accommodations for the entertainment of officer personnel. It was thought that such was both necessary and desirable in the interest of morale. (R 89-91) The extension by your petitioner of its hospitality to a rapidly increasing number of officers did not result from any design to commercialize their presence in this community. Your petitioner became a victim of circumstances. It responded patriotically to a patriotic appeal or demand that all such places be devoted in so far as they could to the preservation and building of morale among officers. (R 26)

In the latter part of 1941 and the early part of 1942, many out-of-town officers were accepted by the club as guest

members and for the brief time they were stationed in the vicinity they exercised the privilege of associate members and received and paid for club accommodations on the same basis as regular members. (R 20, 57, 59, 46) In the spring of 1942 the Eighteenth Replacement Wing of the Army Air Force was established at Salt Lake City and the number of young officers seeking accommodations equivalent to those of your petitioner greatly multiplied and correspondingly increased the demand upon your petitioner for such services as it had. As the number of officers multiplied in and about Salt Lake City, the pressure from commanding officers upon your petitioner and others to contribute to the entertainment and recreation of officers grew. (R 20, 45, 89, 90)

Prior to the establishment of the Eighteenth Replacement Wing in Salt Lake City, officers became guest members of the club in substantial number, but the number who availed themselves of this privilege after the spring of 1942 was so far increased, that in 1942 and 1943 the number of such guest members and the amount of money paid into the club's revenues by them was much greater than before. There was, however, no differences in quality between the relationship of the club and army officers in 1941 and 1942. Only because of the increased demand from such men, the club adopted the principle of recognizing the uniform of the Army, Navy or Marine officer as sufficient to justify a man's acceptance as a guest member.

Shortly after V-J Day, the practice of extending guest privileges to military officers was stopped. (R 48) Your petitioner then received letters of thanks and appreciation from commanders whose men had been accorded the use of the club's facilities. (R 49)

The membership of the club consists of regular members who alone have the right to vote, and guest, or associate members, who have no right to vote but who otherwise have the right to enjoy all the privileges of the club at the same price charged regular members. The average number of regular members during 1941, 1942 and 1943, was 212, 162, and 154, respectively. The record does not show

the number of persons who enjoyed privileges as guest or associate members in 1941. In 1942 the number was somewhere between 3,000 and 4,500; and in 1943 somewhere between 9,000 and 10,000. (R 20)

While the Tax Court emphasizes the vast increase in the number of officers who became guest members in 1942 and 1943, nevertheless, the Tax Court found and held: *"The clubhouse was never opened to the public."* (R 20)

The clubhouse was never opened to the public in any of the three years under review. Many officers availed themselves of the accommodations of the club but they cannot be said to be "the public," as the Tax Court has made the finding that the club was never opened to the public. The only difference in the operation of the club in 1942 and 1943 as compared with 1941 is in the number of guest members accommodated and the amount of revenue resulting from their presence. The Tax Court did not point out, and the evidence would not support a finding that there is any other substantial difference between 1941 and either of the two years following.

The Tax Court not only found that the clubhouse was never opened to the public, but it also found that "the petitioner has never distributed any of its income or assets to its members." (R 22) Officers of the club as such were paid no compensation, either directly or indirectly.

When the club moved into its clubhouse it had neither funds with which to equip the place, nor experience with which to operate. It, therefore, entered upon a contract with a concessionaire who furnished the place and operated it for a time. He paid a rental and a percentage of the profits. When his contract terminated, the club purchased his equipment and inventory, and ever since that time has managed the club without his help. The concessionaire, during his tenure, was not a member of the club, but he was at all times subject to the direction of the Board of Directors as to the extent and cost of service and the method of managing the institution. (R 46, 47)

In addition to findings quoted above that, "none of the club's income or assets was ever distributed to any member as such," and "the clubhouse was never opened to the public," the Tax Court found with respect to the year 1941:

(a) "The petitioner, during 1941, was a club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inured to the benefit of any private stockholder."

With respect to 1942 and 1943, the court found:

(b) "Its profits for 1942 from the use of the club and its services by nonmembers were several times as large as the amount of dues and profits received from the use of the club and its services by members.

(c) "Its profits for 1943 from the use of the club and its services by members were about ten times as large as the amount of dues and profits received from the use of the club and its services by members.

(d) "The profits for 1942 and those for 1943 received by the petitioner from the use of the club and its services by nonmembers inured to the benefit of its members.

(e) "The petitioner, during 1942 and 1943, was not a club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inured to the benefit of its members." (R 23)

Paragraphs (a), (b), (c), (d), and (e) in the Tax Court's findings follow each other. (R 23) They show the logic of the decision of the Tax Court and the Circuit Court of Appeals. They point out that the only difference considered by the Tax Court between the years 1942 and 1943 on the one hand and the year 1941 on the other is in the volume and origin of the revenue.

In finding that the petitioner was covered by the statutory exemption in 1941, but not covered in 1942 or 1943, the

court below applied a quantitative standard to petitioner's revenues, which is not justified by the statute or the decided cases. In ruling that the revenues of the club in 1942 and 1943 inured to the benefit of shareholders, it adopted a rule which would effectively defeat the statutory exemption in the case of all social clubs except those in failing circumstances and having no earnings.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. The correct interpretation and proper construction of an exemption statute which affects the revenues of all social clubs and nonprofit organizations throughout the country is a matter of such public interest and concern as to deserve a final settlement by this court.

2. It is of public importance that the following questions be answered with regard to revenues and earnings of clubs organized for social and nonprofitable purposes:

(a) Does the amount of the earnings of such a club determine whether earnings are exempt? If such a club has earnings, can it be said that they inure to the benefit of the members because the financial condition of the organization is thereby improved?

3. The decision of the Tenth Circuit Court of Appeals rendered in this case is probably in conflict with applicable decisions of this court and is also in conflict with decisions of other Circuit Courts of Appeal on the same question.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court to the United States Circuit Court of Appeals for the Tenth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said court numbered and entitled on its docket No. 3465, The Aviation Club of Utah, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said United States Circuit

Court of Appeals for the Tenth Circuit be reversed by this court, and for such other and further relief as to this court may seem proper.

Dated this 24th day of October, 1947.

PAUL H. RAY
S. J. QUINNEY
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

OPINIONS OF THE COURT BELOW

Opinion of the Circuit Court of Appeals for the Tenth Circuit dated June 30, 1947, will be found R. 151 and is reported in 162 F. (2d) 984. Decision of United States Tax Court will be found R. 17-27.

II.

JURISDICTION

1. The date of the judgment to be reviewed is June 30, 1947. An order of this court granting sixty days additional time within which to file petition for certiorari is dated September 26, 1947, and is on file with the Clerk of this Court. The jurisdiction of this court is invoked under U. S. C. A. Title 26, Sec. 1141.

2. The decision of the lower court involves the interpretation of Sub-section 9, Section 101 of the Internal Revenue Code, which exempts from income taxes and some related taxes the revenues of clubs organized and operated exclusively for pleasure, recreation and other nonpofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder. Petitioner claimed that its revenue for 1941, 1942 and 1943 were exempt under that

section. The Tax Court and the Circuit Court of Appeals ruled that the exemption did not apply to 1942 and 1943, but was applicable to 1941. The decision of the Tax Court and of the Circuit Court of Appeals was based upon the finding of the Tax Court that that portion of the revenues of the club for 1942 and 1943 derived from guest members was disproportionately greater than the portion derived from dues and revenues otherwise derived from regular members. (R 23) The Tax Court found, and the Tenth Circuit Court of Appeals affirmed, that the revenues of the club inured to the benefit of the members.

3. The decision of the court below affirming the decision of the Tax Court is probably in conflict with *Trinidad v. Sagrada*, 263 U. S. 578, 68 L. Ed. 458.

4. The decision of the court below affirming the decision of the Tax Court is in conflict with *Scofield v. Corpus Christi Golf Club*, 127 F. (2d) 452; *Santee Club v. White*, 87 F. (2d) 5; *Roche's Beach, Inc. v. Commissioner*, 96 F. (2d) 776; *Koon Kreek Klub v. Thomas*, 108 F. (2d) 616; *Debs Memorial Radio Fund v. Commissioner*, 148 F. (2d) 948; *Anderson Country Club v. Commissioner*, 2 T. C. 1238.

5. The public interest will be promoted by a decision of this court settling the question when, if at all, and under what conditions a club organized for purely social and non-profit purposes may lose the tax exemptions provided by 101 (9) of the Internal Revenue Code.

III.

STATEMENT OF THE CASE

The case is briefly stated in preceding petition for certiorari.

IV.

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals for the Tenth Circuit erred in affirming the Tax Court and holding that petitioner's earnings for 1942 were not exempt under 101 (9).

2. The Circuit Court of Appeals for the Tenth Circuit erred in affirming the Tax Court and holding that petitioner's earnings for 1943 were not exempt under 101 (9).

3. The Circuit Court of Appeals for the Tenth Circuit erred in holding that revenues for 1942 inured to the benefit of any shareholder.

4. The Circuit Court of Appeals for the Tenth Circuit erred in holding that revenues for 1943 inured to the benefit of any shareholder.

5. The Circuit Court of Appeals for the Tenth Circuit erred in approving the application of a quantitative and origin test to petitioner's earnings to determine whether they were exempt.

V.
ARGUMENT

SUMMARY

The statutory exemption relied upon by petitioner exempts clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

That petitioner is a club, and that it was organized exclusively for pleasure, recreation and other nonprofitable purposes, is not denied. Such was the finding of the Tax Court and that finding was not disturbed by the Circuit Court of Appeals.

The Tax Court and the Circuit Court of Appeals concluded that after 1941 petitioner departed from the purposes for which it was organized; that it thereafter operated for profit and that its earnings inured to the benefit of its shareholders. The revenues and earnings of the club did increase in 1942 over 1941 and in 1943 over 1942, but the conclusion that in either year the club had departed from the purposes for which it was organized or that its earnings inured to the benefit of its shareholders is contrary to the exemption statute and in conflict with decisions of this court and of other circuit courts of appeal.

Earnings of petitioner in 1942 and 1943 were condemned by the courts below as nonexempt, because they were larger than those of 1941 and because they *originated* more with commissioned officers who were guest members than with regular members. That condemnation required the application of quantity and origin of income as a standard for determining whether the exemption applied. Such standards are not embraced in either statute or lawful regulation and are disapproved by applicable decisions.

The conclusion that the earnings of 1942 and 1943 inured to the benefit of private shareholders is based upon the findings that such earnings permitted petitioner to keep up the installments on its clubhouse, to purchase some unimproved adjoining ground for purely club purposes and to set aside a fund for postwar betterment of the club's facilities. Such a conclusion is unsound; is unsupported by any applicable decision and would destroy the exemption in the case of any social club which operated at a profit.

DETAIL OF ARGUMENT

Petitioner had been in existence only a little more than a year when war came and it, like all others, found itself existing under new and strange conditions. Petitioner began existence according to the familiar pattern of social clubs. In June of 1941 it made a down payment on a clubhouse and moved in. It had regular members and associate or guest members. It had a few rooms to rent, a library, a buffet and a dining room.

As war approached Army personnel filtered into Salt Lake City. Among them were some flying officers under command of General Ralph C. Royce. General Royce encouraged petitioner to accept his flyers into its hospitality so that they might have the freedom of refined and private surroundings.

Petitioner accommodated such officers within the limits of its capacity, but no change was ever made in petioner's organization and its purpose to own and maintain a private, nonprofit club was never abandoned.

As time passed and war came on the number of commissioned officers in and about Salt Lake City increased and in the spring of 1942 the Eighteenth Replacement Wing was established nearby. Hundreds of flying officers came to that base to stay a few days and then be gone to be replaced by others.

Petitioner had arranged to accommodate the smaller number of officers in 1941 and was urged by military commanders and civilian leaders alike to extend hospitality to ever increasing numbers. (R 80, 90, 91) In response to such importunings, petitioner accepted as guest members as many officers as it could accommodate. Because of the overwhelming influx of Army personnel, petitioner was almost helpless in the matter.

The number of officers applying was so great and their stay in Salt Lake was so short it was not feasible to charge them either dues or initiation fees. (R 46) The time came in 1942 when the uniform of an officer of the United States was regarded as sufficient credentials to justify the wearer's acceptance as a guest member. If such a one applied he was given a book of rules to govern his conduct and was permitted to enjoy the services of the club at the price charged regular members.

Officers so accommodated spent money with the club and increased its earnings. But, as found by the Tax Court, "the club was never opened to the public." While the war lasted it would have been quite impossible for petitioner to gracefully turn officers from its doors. But as soon as hostilities ceased guest privileges were withdrawn. This was inconsistent with the idea that the club's purposes had become commercial as earnings could have been kept at a high level by continued acceptance of officers as guest members on the basis of the earlier years.

In *Trinidad v. Sagrada*, 263 U. S. 578, 68 L. Ed. 458, this court had before it the claim of a corporation sole of the Philippine Islands that it was organized and operated exclusively for religious, charitable and educational purposes and that no part of its net income inured to the bene-

fit of any shareholder or individual. Upon that claim it sought to recover income taxes which it had paid on account of profits derived from its operations. The company enjoyed large revenues from rents upon real estate, dividends upon securities, interest upon invested capital and substantial revenue from the sale of wine and chocolate. All of the profit realized by the corporation was spent or held and used for carrying on religious, charitable and educational work. In sustaining the claim of exemption from taxation and adjudging the corporation entitled to recover, this court observed in part:

> "Two matters apparent on the face of the clause go far towards settling its meaning. First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific, or educational purposes, and yet have a net income. Next, it says nothing about the source of the income, but makes the destination the ultimate test of exemption."

The foregoing would seem to condemn the application of the origin or amount of revenue as the standard for determining whether the exemption applies. Circuit Courts of Appeal have so construed this Court's ruling in the *Sagrada* case. The effect of the *Sagrada* case cannot be avoided by stating that no such standard was applied in the case now under review as the findings of the Tax Court quoted earlier in this petition and brief at page 6 make it plain that such a standard was applied.

The Koon Kreek Klub was a hunting club. In the year involved it rented pasture for $500.00 and received a bonus of $25,000.00 for signing an oil lease covering a portion of its lands. The money so acquired was used to pay off a mortgage upon the property and for certain other purposes. The Circuit Court of Appeals for the Fifth Circuit ruled that the income of the club, including that from the pasture rental and oil lease was exempt, notwithstanding it had been used to free the club of indebtedness. *Koon Kreek Klub v. Thomas,* 108 F. (2d) 616.

The Santee Club owned a large fishing and hunting preserve. It sold a portion of its land at a profit. The Circuit Court of Appeals for the First Circuit ruled that the earn-

ings arising from the sale of the land were exempt. *Santee Club v. White,* 87 F. (2d) 5.

The Corpus Christi Golf and Country Club leased its golf course for oil drilling, for which it received a bonus and certain royalties. The use of the club for golf playing was somewhat interfered with by drilling operations, but was not suspended, notwithstanding the presence of oil derricks, etc. The interference was temporary and non-recurrent. The Fifth Circuit Court of Appeals ruled that the club had not lost its exemption. *Scofield v. Corpus Christ Golf and Country Club,* 127 F. (2d) 452. (5th C. C. A.)

In the court below the defendant Commissioner recognized the *Corpus Christi* case as against him but criticized the logic of the decision. We have then, at least by tacit admission, a clear conflict in the decision of the court below of which we seek review and the decision of the Fifth Circuit Court of Appeals in the *Corpus Christi* case.

The three cases just mentioned all involved Section 101 (9), the section relied upon by petitioner.

In *Debs Memorial Radio Fund v. Commissioner of Internal Revenue,* 148 F. (2d) 948, the Second Circuit Court of Appeals had before it Section 101 (8), a companion provision to 101 (9). It appears that the Radio Fund there involved was created to assist in advancing the views of socialism. It sold commercial time on its radio station in competition with purely commercial broadcasting companies and was seeking to increase the sale of commercial time. Profits were made but not distributed to any shareholder. The court ruled that notwithstanding the fund realized a large income from the sale of commercial time, its earnings were exempt.

Roche's Beach, Inc., was organized for the purpose of creating a medium through which a charitable foundation might come into funds to be used for charitable purposes. The income of the Beach arose from the sale of concessions for restaurants, refreshment stands, etc., from the rental of bathing suits, bathhouses and towels, and from the rental of certain houses located upon the beach. Notwithstanding

all the revenues came from what would otherwise be commercial operations, the Second Circuit Court of Appeals held that inasmuch as the profits were devoted to charitable purposes, the exemption applied. *Roche's Beach, Inc. v. Commissioner of Internal Revenue*, 96 F. (2d) 776, (C. C. A. 2nd.)

In all of the foregoing cases the Circuit Courts of Appeal followed the lead of this court in the *Sagrada* case. All of the revenues derived by your petitioner from its operations in 1942 and 1943 were either spent for or held by the club to be used exclusively for the purposes for which the club was organized: Social, nonprofit purposes.

The court below and the Tax Court ruled against petitioner upon authority of *West Side Tennis Club v. Commissioner*, 111 F. (2d) 6, and *Jockey Club v. Helvering*, 76 F. (2d) 597. We believe that those two cases clearly distinguish themselves from the case which we are here presenting. The West Side Tennis Club was for many years a club organized and operated in accordance with the requirements of the exemption statute. The time came, however, when it built a stadium with a seating capacity of more than 12,000 persons. The stadium was built at great expense for the sole purpose of accommodating such of the general public as might from year to year attend the national championship matches at Forest Hills. The stadium was to attract the public, not to give temporary and nonrecurring sanctuary to army officers in the clubhouse already acquired and in operation. The Tennis Club not only built the stadium to attract the public, but it did so in reliance upon the hope that attendance would recur year after year indefinitely. In arriving at its conclusion in the Tennis case, the court had before it *Santee Club against White*, supra, *Koon Kreek Klub v. Thomas*, supra, and *Trinidad v. Sagrada*, supra. It held that the situation of the Tennis Club was unlike that in any of the cases cited and, therefore, distinguishable. *Jockey Club v. Helvering*, supra, is clearly in the same class as the West Side Tennis case.

In *Coeur d'Alene Country Club v. Viley*, 64 F. Supp. 541, Judge Clark of the District of Idaho had before him

a claim arising under Section 101 (9) of the Revenue Code and reached a decision which we regard as in harmony with the contention we make here.

Notwithstanding the Tax Court found that the club never had any specific intention of distributing any of its profits to its members, the Circuit Court of Appeals for the Tenth Circuit concluded that the earnings and profits of the club for the years 1942 and 1943 inured to the benefit of the shareholders. The record shows without dispute that no property or assets of the club was ever distributed to any shareholder and no salary was ever paid to any officer of the club as such. One of the members of the club received a small salary for keeping the club's books of account, but no claim was ever made that the amount paid such person exceeded the value of his service. If it can be fairly held that the earnings of petitioner inured to the benefit of shareholders to the loss of the exemption provided by Section 101 (9), then it is doubtful that any club can ever enjoy the benefit of such exemption. Under such a ruling if a club has any net earnings, such earnings would inure to the benefit of the members and the exemption would be lost. In such view only if the club fails to have net earnings could it be said there is no benefit inuring to the members. Thus the exemption applies only to clubs which have no earnings and therefore no need of exemption. We must ascribe to Congress a different intention. If a social club starts operation with a debt, it must pay its debt or cease to operate. If it buys a clubhouse and makes a down payment, it must pay the balance or suffer foreclosure and dispossession. Every payment made on the purchase price reduces the danger of the foreclosure and improves the member's chance of continued enjoyment of his club. Final payment of the purchase price and creation of a surplus for maintenance, betterments and expansion promises added service and pleasure and enhances the value of membership. We suspect that such is the aim of every social club and such must have been in the mind of Congress. If such benefits deprive petitioner of statutory exemption, then what social club could be entitled to exemption?

In the court below, the Commissioner relied upon Section 29.101 (9)-1 of Regulation 111 and claimed that because the Regulation provides that when the club engages in traffic for profit, such club is not organized and operated exclusively for pleasure, etc. We deny that the Commissioner by regulation could to any extent repeal the exemption section, but in any event, all the claim for 29.101 (9)-1 of the regulation amounts to is that a standard related to quantity and origin of revenue is authorized by the statute. We reassert that the application of any such standard is contrary to the statute and to the applicable cases cited above.

If the Commissioner is right, then a club organized as petitioner was organized will begin each taxable year on an exempt status, but sometime during the year it may lose that exemption depending upon the quantity of its earnings. It will be at the mercy of the Commissioner or its agent, because it can look to no standard to determine when it has run past or outside of the coverage of the exemption.

Settlement of these questions seems to be of public importance. Wherefore, petitioner prays that its petition for certiorari be granted.

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Attorneys for Petitioner